



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0167; FRL-8989-01-R6]

Air Plan Approval; New Mexico; Clean Air Act Requirements for Emissions Inventory and Emissions Statement for Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submitted by the State of New Mexico to meet the Emissions Inventory (EI), and Emissions Statement (ES) requirements of the Federal Clean Air Act (CAA or the Act) for the Sunland Park ozone nonattainment area for the 2015 8-hour ozone national ambient air quality standards (NAAQS). EPA is proposing to approve this action pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before **[INSERT DATE 30**

DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0167, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file

sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT SECTION**. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7222, salem.nevine@epa.gov. The EPA Region 6 office is closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there is a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Ozone is a gas that is formed by the reaction of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) in the atmosphere in the presence of sunlight. Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_x referred to as ozone precursors. These precursors (VOC and NO_x) are emitted by many types of pollution sources, including point sources such as power plants and industrial emissions sources; on-road and off-road mobile sources (motor vehicles and engines); and smaller residential and commercial sources, such as dry cleaners, auto body shops, and household paints, collectively referred to as nonpoint sources (also called area sources).

1. The 2015 Ozone NAAQS

On October 1, 2015 the EPA revised both the primary and secondary NAAQS¹ for ozone from concentration level of 0.075 part per million (ppm) to 0.070 ppm to provide increased protection of public health and the environment (80 FR 65296, October 26, 2015). The 2015 8-hour ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008 NAAQS but is set at a more protective level. Specifically, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.07 ppm².

On March 9, 2018 (83 FR 10376), the EPA published the Classifications Rule that establishes how the statutory classifications will apply for the 2015 8-hr ozone NAAQS, including the air quality thresholds for each classification category and attainment deadline associated with each classification.

On June 18, 2018, the EPA classified the Sunland Park area in southern Doña Ana County, New Mexico as marginal nonattainment area for 2015 ozone NAAQS with an attainment deadline of August 3, 2021. (*See* 83 FR 25776).

2. Statutory and Regulatory Emission Inventory Requirements

An emission inventory of ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. The emissions inventory provides emissions data for a variety of air quality planning tasks, including establishing baseline emission levels for calculating emission reduction targets needed to attain the NAAQS, determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward meeting Reasonable Further Progress (RFP) requirements.

¹ The primary ozone standards provide protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations against an array of adverse health effects that include reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality. The secondary ozone standards protect against adverse effects to the public welfare, including those related to impacts on sensitive vegetation and forested ecosystems.

² For a detailed explanation of the calculation of the 3-year 8-hour average, see 80 FR 65296 and 40 CFR part 50, Appendix U.

CAA section 182(a)(1) and 40 CFR 51.1315(b) require states to submit a “base year inventory” for each ozone nonattainment area within two years of the effective date of designation. This inventory must be “a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1)” (40 CFR 51.1300(p), see also CAA section 172(c)(3). In addition, 40 CFR 51.1310(b) requires that the inventory year be selected consistent with the baseline year for the RFP plan, which is usually the most recent calendar year for which a complete triennial emissions inventory is required to be submitted to the EPA under the Air Emissions Reporting Requirements (AAER) (40 CFR part 51, subpart A).

3. Statutory and Regulatory Emissions Statement Requirements

Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit revisions to their SIP to require the owner or operator of each major stationary source of NO_x or VOC to provide the state with annual statement documenting the actual emissions of NO_x and VOC from their sources. For nonattainment areas, air agencies must develop, and include in their SIPs, emission reporting programs for certain VOC and NO_x sources in accordance with CAA section 182(a)(3)(B). The required state program defines how air agencies obtain emissions data directly from certain facilities, and these data, along with other information, are then reported to the EPA as part of SIP inventories required under CAA sections 182(a)(1) and 182(a)(3)(A). This state program is generally referred to as an emissions statement regulation, and it outlines how certain facilities must report emissions and facility activity data to an air agency, typically a state agency. Reports submitted to air agencies must be accompanied by “a certification that the information contained” in the report is “accurate to the best knowledge” of the facility. To properly implement the emissions reporting requirements, emissions statement regulations should be coordinated carefully with the data elements that are required by the EPA (requirements at 40 CFR 51.1115 and 40 CFR 51.1315). An air agency must submit the emissions statement regulation required by CAA section 182(a)(3)(B), or a written statement

certifying a previously approved regulation, to the EPA as a SIP revision for approval. CAA section 110, in conjunction with 40 CFR 51.102, 51.103 and Appendix V, establishes the procedure for submitting a SIP revision. Under section 182(a)(3)(B)(ii), air agencies may waive the requirement for emission statements for classes or categories of sources with less than 25 ton per year of actual plant-wide NO_x or VOC emissions in nonattainment areas, provided the class or category is included in the base year and periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), respectively.³

II. State's Submittal

On September 10, 2020, New Mexico^{4,5} submitted to EPA a SIP revision addressing the 2015 ozone NAAQS emissions inventory and emissions statement requirements for the Sunland Park nonattainment area.

a) Base Year Emission Inventory

New Mexico Environmental Department (NMED) has developed a 2017 base year emissions inventory for the Sunland Park nonattainment area. The 2017 base year emissions include all point, nonpoint (area), on-road mobile, and non-road mobile source emissions. Table 1 summarizes the 2017 NO_x and VOC emissions for the Sunland Park nonattainment area for a typical ozone season day⁶ (reflective of the summer period, when the highest ozone concentrations are expected in the ozone nonattainment areas).

**Table 1 - Sunland Park Nonattainment Area
Ozone Season Day Emissions Estimates Summary**

Source Type	VOC Tons/day	NO_x Tons/day
Point	0.08	2.69
Nonpoint (Area)	0.57	0.21
On-road Mobile	0.06	0.10

³ See Implementation of the 2015 NAAQS for Ozone: Nonattainment Area State Implementation Plan Requirements Plan Final Rule, 83 FR 63002-63023, December 6, 2018

⁴ The New Mexico Environmental Improvement Board (EIB) is given the authority under state law to adopt rules and plans that are included in the New Mexico's SIP.

⁵ The New Mexico SIP applies throughout New Mexico, except for Bernalillo County (Albuquerque) and Indian lands.

⁶ See Ozone season day emission as defined in 40 CFR 51.1300(q)

Non-road Mobile	0.08	0.33
Total	0.78	3.33

b) Emission Statement

Pursuant to section 182(a)(3)(B), states with ozone nonattainment areas must require annual emissions statements from NO_x and VOC stationary sources within those nonattainment areas. New Mexico's emissions statement regulation resides in New Mexico's SIP at 20.2.73 New Mexico Administrative Code (NMAC), "Notice of Intent and Emissions Inventory Requirements", approved by EPA on November 27, 2012 (77 FR 70693). Emission Inventory Requirements, section 20.2.73.300(A) NMAC applies to all stationary sources in an ozone nonattainment area that have a construction permit, filed a notice of intent, or emits more than ten tons per year (tpy) of nitrogen oxides (NO_x) or volatile organic compounds (VOC). Reporting requirements (20.2.73.300(B) NMAC) include annual emissions reports for any major source in ozone nonattainment area with potential to emit more than 100 tpy and any source that has the potential to emit more than 25 tpy of NO_x and VOC within the nonattainment area submitted by April 1 of each year or a date set by permit conditions. Sources that emit between 10-25 tpy must keep annual emissions records and provide them in an approved format upon request from the department. Emissions reports must contain all contact and facility information along with a signed certifying statement from the certifying official authorized to attest to the accuracy and validity of the emissions submitted on behalf of the facility as required by New Mexico's regulations (20.2.73.300(C) NMAC). Additional reporting requirements for sources within nonattainment area are included in (20.2.73.300(D) NMAC) include typical daily process rates for the ozone season as determined by NMED. Waiver exemption of emissions reporting requirements are included (20.2.73.300(E) NMAC).

III. EPA's Evaluation

EPA has reviewed the New Mexico SIP revision for consistency with the CAA and regulatory emissions inventory and emissions statement requirements.

For the emission inventory, EPA has reviewed the techniques used by the state of New Mexico to derive and quality assure the emission estimates. EPA has also evaluated whether New Mexico provided the public with the opportunity to review and comment on the development of the emission estimates and whether New Mexico addressed the public comments. A summary of EPA's analysis is provided below. For a full discussion for our evaluation, please see our Technical Support Document (TSD) located in the docket for this action.

New Mexico documented the general procedures used to estimate the emissions for each of the four major source types. The documentation of the emission estimation procedures was adequate for us to determine that New Mexico followed acceptable procedures to estimate the emissions.

New Mexico developed a quality assurance plan and followed this plan during various phases of the emissions estimation and documentation process to quality assure the emissions for completeness and accuracy. These quality assurance procedures are summarized in the documentation describing how the emissions totals were developed. We have determined that the quality assurance procedures followed by New Mexico are adequate and acceptable and that New Mexico has developed inventories of VOC and NO_x emissions that are comprehensive and complete.

For the emission statement, New Mexico's EPA approved SIP contains provisions that address the CAA emission statement requirements.

New Mexico notified the public and offered the opportunity for comment and public hearing. A full record of public notices, and written comments received during public comment period as well as states' response to those comments are included in the state's submittal. New Mexico received no request for public hearing. A copy of the New Mexico SIP revision submittal is available online at www.regulations.gov, Docket number EPA-R06-OAR-2020-0167.

IV. Proposed Action

We are proposing to approve the New Mexico SIP revision submitted on September 10, 2020 to address the emissions inventory, and emissions statement requirements for the Sunland Park area for the 2015 ozone NAAQS. The emissions inventory we are proposing to approve are listed in Table 1 above. We are proposing to approve the emissions inventory because it contains comprehensive, accurate and current inventory of actual emissions for all relevant sources in accordance with CAA sections 172(c)(3) and 182(a)(1) requirements. We are proposing to approve the New Mexico emission statement because it includes the approved provision addressing CAA emission statement requirement in CAA section 182(a)(3)(B). New Mexico adopted the emission inventories consistent with reasonable public notice and opportunity for a public hearing requirement. As stated above, a TSD which details our evaluation is included in the docket for this action. Our TSD may be accessed online at www.regulations.gov, Docket No. EPA– R06–OAR–2020–0167.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 7, 2021.

David Gray,
Acting Regional Administrator, Region 6.

